

COMMISSIONERS APPROVAL

CHILCOTT *Y*

LUND *BL*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....March 09, 2006

Members Present..... Commissioner Greg Chilcott,
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met on a Request for Commission Action on Skysong Farm Major Subdivision with three variance requests. Present at this meeting was Planner Ben Howell, Consultant Steve Powell and the Developer.

Commissioner Lund read the following statement:

Today's agenda includes one or more land use issues. Because of my years of service as Ravalli County Clerk & Recorder and now as Commissioner and because members of my family are involved in the real estate profession, I am providing this statement in the interest of full and open disclosure. My husband, son and brother-in-law are realtors who conduct business in this county. I do not participate in their real estate business or related matters except as the passive title owner of the building rented by their real estate business. Although connections with my family or their business and the land use issues facing us today are possible, I am not aware of any direct connections and thus do not believe I have any conflicts of interest arising out of my participation in today's meeting.

Ben presented a power point presentation and entered the staff report into the record as follows:



REQUEST FOR COMMISSION

ACTION

OG-06-02-281

Site Visit: March 2, 2006 @ 3:30 p.m.
Meeting: March 9, 2006 @ 9:00 a.m.
Request: To act on the Skysong Farm Major Subdivision with Three Variance Requests.

I. ACTION REQUESTED

This is a request from Louise Grout, represented by Steve Powell, to create the Skysong Farm Major Subdivision with Three Variance Requests.

II. BACKGROUND

The Skysong Farm Major Subdivision is a nine-lot subdivision located northeast of Hamilton on approximately 94.28 acres (See Map 1). The proposed lots range from 1.0 to 20.82 acres in size, with a Homeowners' Park of 17.11 acres dedicated to the Homeowners' Association. The property is within the Corvallis Rural Fire District and the Corvallis School District.



Map 1: Location Map

(Source Data: Ravalli County Planning Department)

Generally, the property slopes to the east and south, with slopes greater than 25% located on Lots 1, 2, 4, and 8. There are several drainages traversing the property. Currently the property has four houses, which are located on proposed Lots 5, 6, 7, and 8. Lot design is based on the physical characteristics of the property and the existing homes.

In conjunction with the subdivision proposal, the applicant is requesting the following variances:

1. From Section 5-2-2(a)(4) of the Ravalli County Subdivision Regulations, to allow for side lot lines to vary from right angles to roads.
2. From Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations, to allow for Lots 1 and 4 to be flag lots. (*Staff note: Upon further review, Staff has determined that Lots 6, 8 and 9 are not flag lots designed to avoid road construction.*).
3. From Sections 5-4-5(a) and (b)(3), and Table 5-4-2 of the Ravalli County Subdivision Regulations, to allow for Weber Heights Road to be a gravel, 18-foot wide road with two hammerhead turnarounds.

Staff recommended approval of variances 1 and 2, denial of variance 3, and conditional approval of the subdivision proposal

III. PLANNING BOARD RECOMMENDATION

The Ravalli County Planning Board conducted a plat evaluation on this proposal on January 4, 2006 and a public hearing on February 1, 2006. They took the following actions:

The Board made a motion to recommend **approval** of Variance Request #1, based on the findings of fact and conclusions of law in the staff report. **The Board voted 8-0 to approve this motion.**

The Board made a motion to recommend **approval** of Variance Request #2, based on the findings of fact and conclusions of law, and subject to the conditions in the staff report. **The Board voted 8-0 to approve this motion.**

The Board made a motion to recommend **approval** of Variance Request #3, based on the findings that the neighborhood wants to maintain a rural character, the position of the road is central to the project and there will be a Homeowners' Association that will maintain Weber Heights Road, subject to the conditions that the covenants and road maintenance agreement will include a dust abatement provision and that the applicant will work with the County to draft an agreement for an annual application of dust abatement. **The Board voted 6-2 to approve this motion.**

The Board made a motion to **approve** the subdivision based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report, amending Condition #6 to state that an encumbrance of \$250 shall be made to the Corvallis School District upon first conveyance of each lot, and a recommendation that parkland dedication be met by the dedication of the Homeowners' Park to the Homeowners' Association. **The Board voted 8-0 to approve this motion.**

Comments from the meeting are contained in the record.

IV. PLANNING BOARD'S RECOMMENDED MOTIONS

(Changes to staff's recommended motion are in underline/~~strikeout~~.)

1. That the variance request from Section 5-2-2(a)(4) of the Ravalli County Subdivision Regulations, to allow side lot lines to vary from right angles to the road, ***be approved***, based on the findings of fact and conclusions of law in the staff report.
2. That the variance request from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations, to allow Lots 1 and 4 to be flag lots, ***be approved***, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
3. That the variance request from Sections 5-4-5(a) and (b)(3), and Table 5-4-2 of the Ravalli County Subdivision Regulations, to allow for Weber Heights Road, an existing substandard private road, to be improved to be an 18-foot wide gravel road with two hammerhead turnarounds ***be denied approved***, based on the findings of fact, amended herein, and subject to the conditions, amended herein.
4. That the Skysong Farm Major Subdivision ***be approved***, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report amended herein and with the recommendation that the parkland dedication shall be met as ~~as _____ (cash in lieu of parkland dedication or Homeowners' Park — see findings on page 8)~~ by the dedication of the Homeowners' Park to the Homeowners' Association.

VI. PLANNING BOARD'S RECOMMENDED CONDITIONS

(Changes to staff's recommended motion is in underline/~~strikeout~~.)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included

in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

Notification of Irrigation Ditch/Pipeline Easements. Within this subdivision there are irrigation easements. All downstream water right holders have the right to maintain and repair their ditches/pipelines and diversion structures whenever necessary to keep them in good condition. The filed subdivision plat shows irrigation ditches and easements on the property. The downstream water rights holders must approve any relocation or alteration (i.e. installation of a culvert) of an irrigation ditch or pipeline. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders have the right to use the easement to maintain the ditch or pipeline. *(Effects on Agricultural Water User Facilities)*

Limitation of Access onto a County Road. A "no ingress/egress" restriction is located along the Hamilton Heights Road frontage of the subdivision, excepting the approach to the internal road that is approved by the Ravalli County Road and Bridge Department, which precludes vehicular access onto this County-maintained road. This limitation of access may be lifted or amended with approval of the County. *(Effects on Local Services & Effects on Public Health and Safety)*

Notification of No-Build/Alteration Zone. Within this subdivision there are no-build/alteration zones on Lots 1, 2, 3, 4, 8 and the Homeowners' Park, as shown on the plat to restrict building around the natural drainages, steep slopes, and wetlands on these lots. No new structure, with the exception of fences, may be constructed in this area. *(Effects on Natural Environment & Effects on Public Health and Safety)*

Notification of Severe Soils. Within this subdivision there are areas of the property identified as potentially having soils rated as severe for road and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils in question, which are included as exhibits to this document. (The applicant shall include the exhibits as attachments) *(Effects on Public Health and Safety)*

Notification of Road Maintenance. Ravalli County, the State of Montana, or any other governmental entity does not maintain Weber Heights Road and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for Weber Heights Road was filed with this subdivision and outlines what parties are responsible for road maintenance and under what conditions. (*Effects on Local Services*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Living with Wildlife. (See letter from FWP for the required provisions)
(*Exhibit A-1*) (*Effects on Agriculture & Effects on Wildlife and Wildlife Habitat*)

Riparian Area Use. (See letter from FWP for the required provisions) (*Exhibit A-1*) (*Effects on Natural Environment*)

Maintenance of Homeowners' Park Easements. Within this subdivision there is a Homeowners' Park with associated easements, as shown on the plat. Residents are responsible for maintaining these easements. (*Effects on Local Services*)

Waiver of Protest to Creation of RSID/SID. Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not *limited* to a community water system, a community waste water treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services*)

Access Requirements for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6", maximum grade of 6%, and an all weather surface that can accommodate the weight of a fire truck to meet requirements of the Uniform Fire Code. Please contact the Corvallis Rural Fire District at PO Box 13, Corvallis, MT, for further information on the requirements of the Corvallis Rural Fire District and/or the Uniform Fire Code. (*Effects on Local Services & Effects on Public Health and Safety*)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code which requires the lot owners to post the County-issued addresses at

the intersection of the driveways leading to the residences and Weber Heights Road as soon as construction on the residences begins. (*Effects on Local Services & Effects on Public Health and Safety*)

Lighting for New Construction. Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. (*Effects on Public Health and Safety*)

Primary Heat Source. The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. (*Effects on Natural Environment*)

Control of Noxious Weeds. Lot owners shall control the growth of noxious weeds on their respective lot(s). (*Effects on Natural Environment*)

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. (*Effects on Public Health and Safety*)

Dust Abatement for Weber Heights Road. An application of dust abatement shall be applied annually, or as needed, to Weber Heights Road to address health concerns due to air pollution caused by gravel roadways.

Amendment. The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants listed above, that are required to be included as a condition of subdivision approval.

3. A stop sign shall be installed at the intersection of Weber Heights Road and Hamilton Heights Road, as approved by the Planning Department, in consultation with the Road and Bridge Department, prior to final plat approval. (*Effects on Local Services & Effects on Public Health and Safety*)

4. The final plat shall show a no ingress/egress zone along the Hamilton Heights Road frontage of the subdivision, excepting the approach for Weber Heights Road, as approved by the Road and Bridge Department. *(Effects on Local Services & Effects on Public Health and Safety)*
5. The subdivider shall include an RSID/SID waiver in a notarized document filed with the subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*
6. The applicant shall ~~provide evidence that an amount (to be decided by the Planning Board in consultation with the applicant) per lot has been contributed to the Corvallis School District prior to final plat approval~~ place an encumbrance of \$250 per lot to the Corvallis School District upon first conveyance each lot on the final plat. *(Effects on Local Services)*
7. The applicant shall provide a letter from the Corvallis Rural Fire District stating that they have provided the required 1,000 gallons per minute water supply or 2,500 gallons per minute water storage for fire protection for each lot within this subdivision. Alternatively, the applicant may provide evidence of a \$500 per lot contribution made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services & Effects on Public Health and Safety)*
8. The applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision, in accordance with E-911 addressing policy. *(Effects on Local Services & Effects on Public Health and Safety)*
9. The natural drainages, steep slopes, and wetlands in Lots 1, 2, 3, 4, 8, and the Homeowners' Park shall be designated as no-build/alteration zones on the final plat, as shown on the preliminary plat. *(Effects on Natural Environment & Effects on Public Health and Safety)*
10. The applicant shall place a provision for dust abatement on Weber Heights Road in the Road Maintenance Agreement, and work with the County on an agreement for long-term annual dust-abatement to Weber Heights Road.

11. The developer must reconstruct Weber Heights Road to the standards specified in the grading and drainage plans, specifically to be an 18-foot wide privately-maintained gravel road in a 60-foot wide public road and utility easement with two hammerhead turnarounds.

REMAINING ISSUES: None.

FISCAL IMPACT: No extraordinary fiscal impacts noted.

ATTACHMENTS: Application package
Staff Report with attachments
Planning Board meeting minutes for the January 4, 2006 plat evaluation and February 1, 2006 public hearing
Additional material handed out at Planning Board Public Hearing

STAFF: Benjamin H. Howell

DATE: February 28, 2006

Steve indicated the Planning Board voted unanimously on all variances with the exception of the pavement. The paving is the most substantive; the other issue is the turn-around on a 1,800 foot-long road. Steve stated there are two existing turn-arounds for entrances into the two houses, and one major one at the beginning of the road. Steve stated they would like to have a hammerhead at the end of the road. The proposal is to bring the new road to lot 9 with another hammerhead. In regard to the paving, the houses are occupied by friends who utilize the area for gardening. They feel paving will not lend itself to the rural character. Plus, if the public sees a paved road off Hamilton Heights Road, traffic will take the road. The developer agrees to dust palliative and therefore there will be no dust issues. Steve stated the dust would follow the wind and stay away from the houses. There is a Homeowners' Association and they will apply the dust palliative every other year.

There was no further public comment. Board deliberation began.

Commissioner Lund asked about the flag lot for Lot 1. Ben determined Lot 1 to be a flag lot, because if they redesigned the lots, and Lot 2 could be in front of Lot 1 a road would need to be designed. Therefore, they could be designing the lot in order to avoid the construction of a road. Steve stated there is a relatively steep hill at that location. They will re-locate the road to the east, so traffic has better visibility. Therefore, the design of the lot will allow better access. Steve stated the regulations discuss flag lots and the attempt to avoid road construction. He stated there is no attempt to avoid any road construction here, due to the topography of the area. Ben stated the regulations state the flag lot has a corridor to the bulk of the lot. Lot 4 and Lot 1 fit that description. He stated they used the definition of the regulations.

Commissioner Lund asked if the flag lot is created and the lots are taken to the edge of the road, who will own the road? Steve stated a legal entity would be created for the

owners of the road. The homeowners are owners of the lots, and this is perpetual under their specific covenants. Commissioner Chilcott stated the way he understood it, the covenants 'sun-setted' after 10 years, unless they have language allowing them to be perpetual.

A review of the covenants, reads they are automatically renewed after ten years. Steve felt the homeowners all take part in the road, rather than individual lot owners. Commissioner Lund stated there have been some 'issues' over this type of ownership in the past for taxes due on the road. Steve stated they could add language to avoid this issue. Commissioner Lund stated if the ownership is conveyed to the homeowners then future problems could arise. Steve stated a provision of delinquent taxes from the homeowners could be to the lot owners, but the enforcement is through the homeowners. Commissioner Lund said if the roads are deeded to the homeowners she feels more comfortable about the tax issues.

Commissioner Thompson stated he looked at the development, but has been away for a week. He addressed the community water supply. Steve stated the three wells on the west side of the road are artesian wells, (100 gallons a minute). Currently four houses will be served on one well. The other two wells will serve the remaining house. Lots 2, 3 & 4 will have their own wells. This is not a community well, rather it is a private domestic well shared between two houses.

Commissioner Thompson commented on the variance request, stating the importance of having regulations in order to meet certain requirements. Neighbors need to design properties they want to live in. Variances 1 and 2 are okay because they follow the lay of the land. In regard to variance 3, this is an access to nine lots and two existing homes. Commissioner Thompson asked Ben about the neighbors wanting this to be gravel in order to remain in a rural area. Ben stated these are the neighbors within the subdivision and others by Weber Heights Road.

Commissioner Thompson stated condition #11 addresses the width of the road with the utility easement, etc. He asked if that is in compliance with Fire Department standards. Commissioner Thompson stated he is hesitant to grant a variance that puts the fire trucks in a dangerous situation. Steve suggested the fire department address this specifically because he feels it is adequate for their turn-around needs. Commissioner Thompson agreed the fire department should weigh in on this in order not to require paving and turn-arounds. Ben stated the Corvallis Fire Department made general comments and they do not specify turnarounds, but say they want an unobstructed width of 20' and vertical clearance of 13' and surface sufficient to support the loads of their fire apparatus.

Commissioner Chilcott stated the important issue for him is when they are in the middle of an emergency, if they need three more turnarounds when they are attempting to move their trucks; he is, therefore, opposed to the hammerheads. Ben stated they are allowed for two lots, and the minimum width is 18' with length of 30'. Steve stated part of this issue is the topography issue. He stated there is some granite rock cropping and steep area. It will not be easy to make a turn-around.

Commissioner Chilcott stated the fire department was involved in the long process of ASTHOW standards, so they might not think they have to reiterate what is in existence. Commissioner Thompson said if the variance is granted, the ASTHOW standards must be met. Commissioner Chilcott said from a public safety standpoint, any time they are backing up a water-tender in the middle of the night by volunteers, there is risk and he wants to provide for their safety. Steve asked if they could review this design and make suggestions; then the developer would do whatever was necessary to accommodate this.

Commissioner Chilcott said in the covenants, the homeowners could have small businesses. He indicated they want to make sure this is not in conflict with the subdivision for lease or rent law. He stated he wants to make this clearly defined and he does not want a new buyer to put in a guesthouse. The developer stated they wrote this language; if someone wants a guest home, the owner would have to obtain an approval from the Board of County Commissioners and not the homeowners. Commissioner Chilcott stated he wants to avoid any misunderstanding on what is allowed and what is not allowed to exist. The developer suggested they beef up the language.

Commissioner Chilcott asked if the full cut off lighting was going to be required. Steve indicated that was correct. Commissioner Chilcott stated dust palliative should be noted under road repairs and they need to be consistent. Commissioner Chilcott stated he visited with Planning Staff in regard to weeds. He stated organic farming practices are occurring here and he would like to see a weed management plan with these larger tracks.

Commissioner Chilcott also had a concern on the turn-around versus hammerhead. He stated he could live with the 18', but the fire department needs to weigh in on this. Commissioner Chilcott also noted the Planning Board did not review the criteria on variance #3. If approved, the Board of County Commissioners would need to go through the criteria.

Commissioner Lund said if they approve #3, one finding is that the approval is in concurrence of the Fire Department. Commissioner Chilcott felt they should go through the criteria, since the Planning Board voted for denial.

Commissioner Lund made a motion that the variance request from Section 5-2-2(a)(4) of the Ravalli County Subdivision Regulations to allow side lot lines to vary from right angles to the road, be approved, based on the findings of fact and conclusions of law in the staff report. Commissioner Thompson seconded the motion and all voted "aye".

Commissioner Lund made a motion that the variance request form Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations, to allow Lots 1 and 4 to be flag lots, be approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. Commissioner Thompson seconded the motion and all voted "aye".

The Board then went through the Variance Criteria for #3:

- 1) Commissioner Thompson stated the conclusions for substandard conditions for dust: if mitigation is to treat the road with dust palliative but to be continually treated, and approved by Corvallis Fire and through ASHTOW standards we have mitigated the public health issue. Commissioner Chilcott stated under public health he is thinking this should include the fire department 20' width and radius for turn-arounds and any mitigation for public health and safety. Commissioner Lund agreed it is up to the Fire Department to work with the developer. Mitigating factors are: annual and as many times as needed for dust palliative, and a letter from the Corvallis Fire Department for mitigation. All agreed as mitigated.
- 2) Commissioner Lund said the topography is unusual and unique. Commissioner Thompson stated a road could be built and he would disagree. Commissioner Chilcott also disagreed. Commissioner Lund did not concur with Commissioner Thompson and Commissioner Chilcott.
- 3) Commissioner Lund agreed. Commissioner Chilcott stated there might be some physical conditions that could prevent the applicant from meeting the requirements. Commissioner Lund stated they would like to see this as a rural community. Commissioner Chilcott stated this is referring to the physical conditions and not the rural character. Commissioner Thompson stated this property could have been subdivided into 40 lots with a paved road. This request is for the driveways and roads that access into the current road, thus he would disagree but would say this is right on the line. Commissioner Chilcott stated there is nothing that prevents this from happening. Commissioner Lund and Commissioner Thompson agreed and Commissioner Chilcott disagreed.
- 4) Commissioner Thompson said County-wide goal #3 has been mitigated, and goal #4 has no other costs, mitigated with dust palliative and mitigated with waiver of RSID. All concurred.
- 5) Commissioner Thompson said it is mitigated through the fire department, Commissioner Lund and Commissioner Chilcott agreed.

Overall finding: Commissioner Thompson: overall positive finding. Commissioner Lund: overall positive finding. Commissioner Chilcott: overall positive finding.

Commissioner Thompson made a motion that the variance request from Sections 5-4-5(a) and (b)(3), and Table 5-4-2 of the Ravalli County Subdivision Regulations, to allow for Weber heights Road, and existing substandard private road, to be improved to be an 18 foot-wide gravel road with two hammerhead turn-arounds be approved, based on the findings of fact, amended herein, and subject to the conditions, amended herein, and those conditions as follows:

- 1) Letter of concurrence from the Corvallis Fire Department
- 2) Bi-annual application of dust abatement or more often as needed.

Commissioner Lund seconded the motion and all voted "aye".

Commissioner Lund made a motion that the Skysong Farm Major Subdivision be approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report amended herein, mitigated by the Board of County Commissioners, and with the recommendation that the parkland dedication shall

be met by the dedication of the Homeowner's Park to the Homeowners Association. Commissioner Thompson seconded the motion and all voted "aye".

Steve asked if the fire department wants a change, could that be a minor deviation to the plat? The Board of County Commissioners so indicated. Steve asked about the existing homes on the lots, fire and school not typically applied? Commissioner Chilcott said they have gotten by with no contribution and there was an initial impact, so now it is time to recover.

Commissioner Thompson attended a Human Resource meeting in Missoula during the early afternoon hours.

Commissioner Chilcott and Commissioner Lund attended a University of Land Use Law Clinic practice presentation on the south corridor to Highway 93.

The Board also attended a MonTEC luncheon meeting with the Department of Commerce CRDC.

Commissioner Chilcott attended RC & D Program Council meeting during the late afternoon hours.

The Board made a site visit at Mountain View Orchards Block 2, Lot B.

Commissioner Chilcott attended a Right to Farm and Ranch Board meeting during the evening hours.